

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TENNESSEE

3 TIMOTHY BROWN,
4 Individually and as next
5 friend of MELODY BROWN,
6 his minor daughter,

7 Plaintiffs,

8 vs.

9 UNITED STATES,

10 Defendant.

CASE NO.
03-2282ML/A

COPY

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13 VIDEOTAPED DEPOSITION OF:

14 NOEL TULIPAN, M.D.

15 Taken on behalf of the Defendant

16 August 7, 2007
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21

22 VOWELL & JENNINGS, INC.
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1 THE VIDEOGRAPHER: Here begins
2 Volume 1, Videotape No. 1 in the deposition
3 of Dr. Noel Tulipan in the matter of Timothy
4 Brown versus United States in the U.S.
5 District Court, Western District of
6 Tennessee. The Case No. is 03-2282ML/A.
7 Today's date is August 7th, 2007. Time on
8 the video monitor is 1:20. The video
9 operator today is Jason Powers of Vowell &
10 Jennings.

11 Counsel, please identify
12 yourselves and state whom you represent.

13 MR. SILER: I'm William W. Siler,
14 United States Attorney's Office, Memphis, for
15 the Defendant.

16 MR. ALSAFFAR: Jamal Alsaffar
17 representing the Plaintiffs, the Brown
18 family.

19 THE VIDEOGRAPHER: Thank you.
20 The court reporter today is
21 Carissa Boone of Vowell & Jennings.

22 Would the reporter please swear in
23 the witness?

24 NOEL TULIPAN, M.D.,
25 having been first duly sworn, was examined,

1 and testified as follows:

2 E X A M I N A T I O N

3 QUESTIONS BY MR. SILER:

4 Q. Dr. Tulipan, would you state your full
5 name for us, please.

6 A. I'm Dr. Noel Tulipan.

7 Q. Where is your office address?

8 A. I'm based at the Doctors' Office Tower
9 of Vanderbilt Children's Hospital in
10 Nashville, Tennessee.

11 Q. And you are a medical doctor there; is
12 that correct?

13 A. Yes, sir, I am.

14 Q. I want to go over your credentials a
15 little bit. First, let me ask you to
16 identify your CV (tendering).

17 A. Yes, this is it.

18 MR. SILER: I'll ask that this be
19 marked as Exhibit 1.

20 (Exhibit No. 1 was marked.)

21 BY MR. SILER:

22 Q. Where are you licensed to practice
23 medicine, Dr. Tulipan?

24 A. I'm licensed in the state of Tennessee
25 only.

1 at trial, and is it your --

2 A. Yes.

3 Q. Let me just get the question on the
4 record.

5 A. Okay.

6 Q. Are you telling the Court that "I'm
7 just not available on the week of October
8 15th"?

9 A. Right, I won't be there.

10 Q. Okay. Now, let's go back to -- to
11 what you reviewed. Did you review the
12 physical therapy notes, occupational,
13 physical therapy notes for --

14 A. I glanced over them but I certainly
15 have not memorized them and didn't pay that
16 much attention to them.

17 Q. Okay. Did you review any of her
18 current treating physician's notes or medical
19 records?

20 A. Yes. I looked at the neurosurgical
21 records from Dr. Ianhouse (phonetic).

22 Q. Okay. Other than Dr. Ianhouse, did
23 you look at any other specific treating
24 physician?

25 A. Not that I can recall.

1 Q. Okay. Pediatricians, you didn't
2 review that you can recall?

3 A. Not that I can recall.

4 Q. Okay. I believe you'd said that a
5 summary was provided to you by the attorney
6 for the -- for the Government, Mr. Siler?

7 A. That's correct.

8 Q. Okay. Do you mind if I take a look at
9 that?

10 A. Sure.

11 Q. That almost got me.

12 A. Yeah.

13 Q. Okay. Doctor, you've shown me a
14 letter dated June 8th, 2007, two-page letter;
15 is that correct, from Mr. Siler?

16 A. Yes, correct.

17 Q. Okay. And is this the medical summary
18 Mr. Siler created for you that you relied on
19 in coming to your opinions in this case?

20 A. Yes, sir.

21 Q. All right. And I believe you said
22 that you relied primarily on this letter from
23 Mr. Siler as well as the reports from the
24 Plaintiffs' experts; is that fair to say?

25 A. That's correct.

1 A. Yes. I think it's not more than a
2 couple hours.

3 Q. Okay. So not including the deposition
4 time, because now you're just telling us what
5 your opinion is rather than review for it.
6 Is it -- so up -- up to today in forming your
7 opinion on Melody Brown's life expectancy,
8 you've spent a couple of hours in preparation
9 for your opinions; is that fair to say?

10 A. That's correct. Once again, not
11 withstanding 20-plus years of experience.

12 Q. Sure. And let's just assume that
13 every time you give a medical opinion, you're
14 basing it on your experience.

15 A. Right.

16 Q. Yeah. Let's assume that for the rest
17 of the deposition.

18 All right. So in preparation for your
19 specific opinions in this case, you've spent
20 a total of a couple of hours over --

21 A. That's correct.

22 Q. Okay. And you're going to bill the
23 Government for that, right?

24 A. Yes, sir.

25 Q. Okay. Is your hourly rate for review

1 normal life expectancy, and that it's
2 significantly reduced when compared to a
3 patient without the problems of -- that are
4 entailed by spina bifida.

5 Q. So you believe her life expectancy
6 will be reduced from the normal life
7 expectancy of -- of a female?

8 A. Yes.

9 Q. And what is the normal life expectancy
10 of a female, your understanding?

11 A. To the best of my knowledge, it's in
12 the mid-80s for somebody who doesn't have
13 some other predisposing problem.

14 Q. All right. So I'm going to break it
15 down a little bit. So you believe that --
16 that she -- that Melody Brown will not have a
17 life expectancy in the mid-80s. It'll be
18 somewhere below that?

19 A. Yes, sir.

20 Q. Okay. But you can't tell the Court
21 specifically what number her life expectancy
22 is going to be, other than it's not going to
23 be a normal one?

24 A. Correct.

25 Q. And I believe you said one of the

1 reasons for that is that we just don't have
2 the long-term data, medically speaking, in
3 order to determine a specific life expectancy
4 for somebody with spina bifida?

5 A. I'd say that's correct.

6 Q. And Doctor, in forming your -- your
7 opinion that -- that she doesn't have a
8 normal life expectancy, did you compare
9 Melody Brown of any specific patient
10 population in order to form that opinion?

11 A. No, sir.

12 Q. And I don't -- do you keep a database
13 of your patients regarding their specific
14 type and degree of spina bifida and how long
15 they're living or how long they've lived?

16 A. No, sir.

17 Q. Okay. So you didn't refer to any kind
18 of database based on your personal patient
19 population?

20 A. That's correct.

21 Q. You've never seen Melody Brown?
22 You've never met her; is that right?

23 A. Absolutely not.

24 Q. All right. You've never physically
25 examined Melody Brown?

1 A. No, sir.

2 Q. Have you ever -- have you asked at any
3 time Mr. Siler or anybody from the U.S.
4 Attorney's Office to physically examine
5 Melody before providing your life expectancy
6 opinion?

7 A. No, sir.

8 Q. How would you -- how would you -- I
9 don't think I asked you this: How would you
10 classify Melody Brown's spina bifida injury,
11 if you can, based on your review of this
12 case?

13 A. I don't know off the top of my head.
14 I've -- as I understand it, she had a
15 relatively low-level lumbar lesion, but I
16 don't remember the specific number.

17 Q. Okay. So you don't really know what
18 degree or how severe her spina bifida injury
19 is to actually give a qualification of it?

20 A. No.

21 Q. Based on your experience with these
22 patients, do you believe Melody Brown will
23 require life-long medical care and follow-up?

24 A. Yes, sir.

25 Q. And she's got a permanent life-long